

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BRUCE A. DAVENPORT,	:	Case No. 3:18-cv-00387
	:	
Plaintiff,	:	District Judge Thomas M. Rose
	:	Magistrate Judge Sharon L. Ovington
vs.	:	
	:	
EILEEN WICAL,	:	
	:	
Defendant.	:	
	:	

ORDER

In November 2018, Plaintiff Bruce A. Davenport filed a Complaint against Defendant Eileen Wical, his former landlord. On February 8, 2019, summons was returned by ordinary U.S. mail. (Doc. #6). The U.S. Postal Service’s tracking information indicates that the summons was “Delivered, Left with Individual[,] BELLFONTAINE, OH 43311.” *Id.* at *PageID* #47. The Postal Service’s tracking information does not suffice to show that Ms. Wical received the summons. The record, moreover, seems to indicate that she has not received summons since she did not respond to the summons or to Plaintiff’s Complaint.

Before Entry of Default and Default Judgment proceeds against Ms. Wical—along with its possible negative consequences for her—the Court must be certain that she received the summons. After all, “[u]nless a named defendant agrees to waive service, the summons continues to be the *sine qua non*² directing an individual or entity to participate in a civil action or forgo procedural or substantive rights.” *Murphy Bros. v.*

Michetti Pipe Stringing, Inc., 526 U.S. 344, 351 (1999) (original italics) (footnote added).

Absent either waiver or proper service, this Court does not have personal jurisdiction over the named defendant. *See Friedman v. Estate of Presser*, 929 F.2d 1151, 1156 (6th Cir. 1991) (and cases cited therein); *see also O.J. Distrib., Inc. v. Hornell Brewing Co.*, 340 F.3d 345, 353 (6th Cir. 2003) (“[I]f service of process was not proper, the court must set aside an entry of default.” (citations omitted)).

Accordingly, because Plaintiff is proceeding *in forma pauperis*, the U.S. Marshal is ORDERED to forthwith serve Ms. Wical by certified U.S. mail, return receipt requested, at the address Plaintiff has provided to the Clerk of Court.

April 25, 2019

s/Sharon L. Ovington

Sharon L. Ovington
United States Magistrate Judge